

CITY OF SAN JOSE, CALIFORNIA Redevelopment Agency of the City of San Jose 50 W. San Fernando Street, Suite 1100 San Jose, California 95110		Hearing Date/Agenda Number P.C.: 4-10-02 Item: 3.c. <hr/> File Number: RCP01-12-013 <hr/> Application Type: Conditional Use Permit <hr/> Council District: 3 <hr/> Planning Area: Central <hr/> Assessors Parcel Number(s): 259-35-048
<h1>STAFF REPORT</h1>		
PROJECT DESCRIPTION		Completed by: Judie Gilli
Location: 173 West Santa Clara Street		
Gross Acreage: .29	Net Acreage: N/A	Net Density: N/A
Existing Zoning: CG	Existing Use: Vacant	
Proposed Zoning: no change	Proposed Use: Operation of a public eating and drinking establishment, with live music, including after-midnight use, until 2:00 AM, seven days a week	
GENERAL PLAN		Completed by: JG
Land Use/Transportation Diagram Designation		Project Conformance:
Core Area		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<input checked="" type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: JG
North: Commercial - Restaurant	Commercial General (CG)	
East: Commercial – Office Use	Commercial General (CG)	
South: Commercial – Restaurant	Commercial General (CG)	
West: Commercial - Restaurant	Commercial General (CG)	
ENVIRONMENTAL STATUS		Completed by: JG
<input checked="" type="checkbox"/> Reuse of Downtown Supplemental EIR, Certified 04/27/99	<input type="checkbox"/> Exempt	
<input type="checkbox"/> Environmental Impact Report complete on:	<input type="checkbox"/> Environmental Review Incomplete	
<input type="checkbox"/> Negative Declaration circulated on :	<input type="checkbox"/> Negative Declaration adopted on:	
FILE HISTORY		Completed by: JG
Annexation Title: Original City		Date: N/A
HISTORIC STATUS: Landmark		Completed by: JG
REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Action	Approved by: _____ Date: _____
<input checked="" type="checkbox"/> Conditional Approval	<input type="checkbox"/> Recommendation	
<input type="checkbox"/> Denial		Approved by: _____ Date: _____
<input type="checkbox"/> Uphold Director's Decision		
PROPERTY OWNER	BUSINESS OWNER	
John McEnery P.O. Box 68 San Jose, CA 95103	John McKay 5027 Almaden Expressway San Jose, CA 95118	

PROJECT DESCRIPTION

The project site is located at 173 West Santa Clara Street, in the Commercial General (CG) Zoning District. The 0.29-acre project site is improved with a two-story building that fronts on Santa Clara Street. The property owner is requesting a Conditional Use Permit (CUP) to allow operation of a restaurant and bar, Britannia Arms, with entertainment and after-midnight use. The proposed hours of operation are 6:00 AM to 2:00 AM, daily with live entertainment limited from 10:00 AM to 2:00 AM. The restaurant will also operate on the outdoor patio with entertainment, located at the rear of the property. The outdoor patio abuts the outdoor patio for A.P. Stumps, the restaurant located east of the project site. A CUP is required for drinking establishments in the CG district and for all commercial uses operating after midnight. The Zoning Ordinance 20.40.500 requires that any establishment, other than office uses, in any Commercial District, obtain a CUP in order to operate between the hours of 12:00 AM and 6:00 AM. Restaurants are a permitted use in the CG district; therefore, the CUP pertains only to the drinking establishment use and the facility's hours of operation.

GENERAL PLAN CONFORMANCE

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of "office, retail, service, residential, and entertainment uses in the Downtown Core Area." More specifically, late night, entertainment-oriented uses, such as bars and nightclubs, are encouraged to locate in the Core Area rather than in other less appropriate areas of the City so long as they do not impact neighboring uses. Given the project's downtown location, the proposed use is consistent with the General Plan and the Core Area designation.

ENVIRONMENTAL REVIEW

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project does not involve new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999. Thus, no further environmental review is necessary.

ANALYSIS

Through the subject CUP, the applicant proposes to operate a restaurant and drinking establishment, with entertainment and outdoor patio, between the hours of 6:00 AM to 2:00 AM, daily with live entertainment limited from 10:00 AM to 2:00 AM. Such uses are subject to the City Council's 24-hour Use Policy, Guidelines for Evaluation of Nightclubs and Bars as well as the City's Zoning Ordinance. The objective of these policies and ordinances is to ensure that late-night uses, particularly bars and nightclubs, are compatible with surrounding land uses. A key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address this project's operational compatibility within its surroundings:

After Midnight use in the Downtown Core. Britannia Arms, would be limited in operation to no later than 2 AM. These provisions are consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars, where after midnight uses are encouraged to locate within the Downtown. Britannia Arms' location, amid adjacent restaurant and commercial uses, is compatible with surrounding land uses.

Land Use Compatibility. Britannia Arms is surrounded by commercial uses in all directions: restaurants are located to the north, south and west; an office is located directly to the east. The outdoor patio area of Britannia Arms is directly adjacent to other patio areas used for outdoor dining. The patio area of A.P. Stumps, a restaurant located east of Britannia Arms operates until 10:00 PM with entertainment, Monday through Saturday. The patio area for Chow Ciao Café, the restaurant located north of the project site, shares the Britannia Arms' patio area. Chow Ciao Café plans to operate as a restaurant until 3:00 PM. Directly above the proposed use, on the second floor, Club Miami, a nightclub facility operates indoors until 2 AM daily. The nearest residential use to the project is approximately 50 feet away, on the second floor (above A.P. Stumps). According to police records, there have been no recent complaints about noise in the area. Residential occupants will be among those notified of the upcoming public hearing on the CUP request and will have an opportunity to address the Commission. The Police Department has determined that the existing commercial uses in this area have been properly operating and have not caused disturbances (i.e., calls regarding criminal activity) in the area, including during after-midnight hours. With the attached conditions, the proposed use, located in the Downtown Core, adjacent to San Pedro Square and other similar uses with similar hours of operation, is compatible with existing adjacent commercial land uses.

Parking

The project site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking is not required for public eating or drinking establishments and nightclubs. The site, which is fully developed with the existing building, does not include any off-street parking. However, nearby parking facilities (i.e., public garage, on-street parking) will be able to serve patrons and employees of the facility.

FACTS

Staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts, findings and conditions in its Resolution:

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is an application for a Conditional Use Permit (CUP) to operate a restaurant and drinking establishment with after-midnight operations and entertainment.
2. The project site is approximately 0.29 acres and is located in the Commercial General (CG) Zoning District and is improved with a two-story building.

3. A Conditional Use Permit is required for the operation of a drinking and entertainment establishment in the CG Zoning District. Restaurants are a permitted use in the CG Zoning District.
4. The Zoning Ordinance 20.40.500 requires that any establishment, other than office uses, in any Commercial District, obtain a CUP in order to operate between the hours of 12:00 AM and 6:00 AM.
5. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
6. The Core Area designation provides that restaurants, bars and nightclubs may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
7. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999. (same question as above)
8. The project site is surrounded by commercial and office uses.
9. The project site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for eating and drinking establishment uses.
10. The project site is adequately served by public and private utility services.
11. The project site is served by the existing roadway network, which consists of Santa Clara Street; a four-lane major collector street and Highway 87; a major freeway.
12. The proposed project does not include any exterior improvements.

RECOMMENDATION

Subject to testimony provided at the public hearing, it is recommended that the Planning Commission consider the following actions.

Based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. **The proposed use at the location will not:**
 - a. **Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area** because the proposed eating, entertainment and drinking establishment uses are consistent with the commercial uses of the surrounding area; or

- b. **Impair the utility or value of property of other persons located in the vicinity of the site** because the proposed restaurant and drinking establishment will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
 - c. **Be detrimental to public health, safety or general welfare** because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, “Downtown Strategy Plan EIR” (Resolution No. 68839); and
- 2. **The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area** because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
- 3. **The proposed site is adequately served:**
 - a) **By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate** in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
 - b. **By other public or private service facilities as are required** in that the scale of the project will not necessitate expansion of existing service facilities.

This Planning Commission concludes, based upon an analysis of the above facts and findings, that:

- 1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) Zoning District in that the operation of a drinking and entertainment establishment and commercial use between the hours of 12:00 AM and 6:00 AM requires the approval of a Conditional Use Permit.
- 2. The project conforms to the San Jose 2020 General Plan in that it proposes the operation of a drinking, entertainment and eating establishment within the Downtown Core Area.
- 3. This project is consistent with the City Council Policies on 24-Hour Use and Bars and Nightclubs in that it proposes the operation of a drinking and entertainment establishment, with after midnight use, in an area of downtown predominately developed with commercial and office land uses.
- 4. The project conforms to the California Environmental Quality Act in that is does not create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
- 5. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this

permit except upon and subject to each and all of said conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Exterior Improvements. No exterior modifications are approved with this Permit. Any exterior improvements are subject to approval by the Executive Director of the Redevelopment Agency and the issuance of appropriate City permits, as required.
4. Hours of Operation. The hours of operation for the restaurant and bar, with outdoor patio area, will be limited to 6:00 AM to 2:00 AM, daily with live entertainment limited from 10:00 AM to 2:00 AM.
5. Security. A minimum of two security officers shall be on duty for every 100 patrons using the drinking establishment portion of the facility during its hours of operation.
6. Noise and Acoustics.

- a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
- b. Noise emission shall comply with the policies identified in the Noise Element of the San Jose 2020 General Plan.

7. Trash, Refuse, Garbage and Litter.

- a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
- b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
- c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
- d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way.

8. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.

9. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.

CONDITIONS SUBSEQUENT

1. Building Permit. If this Conditional Use Permit includes construction of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.
2. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
3. Time Limit. This Conditional Use Permit expires and has no further force or effect five (5) years from the date of its approval. A Compliance Hearing at the discretion of the Planning Commission may be required at any time during the term of this Permit.
4. Renewal. The Permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the

Redevelopment Agency. In order to be timely, an application for renewal must be filed more than 90 days, but less than 180 days, prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

5. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Executive Director of the Redevelopment Agency, or the Planning Commission on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350 of the *San Jose Municipal Code* it finds:
 - a. A violation of any condition of the Special Use Permit was not abated, corrected or rectified within the time specified on a notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on a Notice of Noncompliance; or
 - c. A use as presently conducted creates a nuisance.